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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IT IS SO ORDERED

James Ware

Judge James Ware

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

PROXIM CORPORATION,)	No.: C 03 03820 JW (ARB)
)	
Plaintiff,)	
)	
vs.)	SECOND STIPULATED APPLICATION
)	FOR FURTHER AMENDMENT TO
MID-AMERICA OVERSEAS, INC.;)	SCHEDULING ORDER; ORDER FURTHER
EASTERN MARINE UNDERWRITERS;)	AMENDING SCHEDULING ORDER
AUSTRIAN AIRLINES; and DOES 1)	
through 20, inclusive,)	
)	
Defendants.)	
)	
<hr/> AND RELATED CROSS-ACTIONS AND)	
COUNTERCLAIM)	

The remaining parties to this action, plaintiff PROXIM CORPORATION and defendant MID-AMERICA OVERSEAS, INC., hereby stipulate and agree as follows:

1. On April 13, 2005, at the request of the parties, the Court entered an Amended Scheduling Order in this action. Among other things, the Court set the matter for Preliminary Pretrial and Trial Setting Conference on November 20, 2006 at 11:00 a.m. Before that Amended Scheduling Order was entered, the Court had set the matter for Preliminary Pretrial and Trial Setting

SECOND STIPULATED APPLICATION FOR FURTHER AMENDMENT OF SCHEDULING ORDER
CASE NO. CV 813984 JW (ARB)

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1 Conference for September 12, 2005. In addition to re-setting the
2 Preliminary Pretrial and Trial Setting Conference, the Court's
3 Amended Order amended the schedule for various other events.

4 2. The parties had made the request for the Amended
5 Scheduling Order because of the pendency of a related action that
6 Proxim Corporation filed against Maritime Insurance Company
7 ("MIC") and its affiliate, Eastern Marine Underwriters ("EMU"),
8 in the Superior Court of Justice in Toronto, Ontario, Canada.
9 (MIC was a defendant in this action but was dismissed on the
10 basis of a forum-selection clause in the pertinent insurance
11 policy.) Plaintiff has recently confirmed that the Canadian
12 action between Proxim and MIC and EMU is going to be re-set in
13 the near future for a date estimated to be during the second
14 quarter of 2007.

15 3. At the time of their request for the Amended Scheduling
16 Order, Proxim and Mid-America believed that a resolution of the
17 Canadian action would benefit both parties in facilitating their
18 assessments of their positions here, and could well lead to a
19 settlement of Proxim's claims against Mid-America. Conversely,
20 if both actions continued on pace for trial, it was possible that
21 the results in the two actions could be inconsistent and thus
22 prejudice either Proxim or Mid-America.

23 4. The reasons that motivated Proxim and Mid-America to
24 seek the former amendment still exist. In order to enable
25 maximum saving of costs by the parties and judicial resources,
26 the parties request that this Court continue the current trial
27 setting conference and all associated dates in the pending Court
28 order dated April 13, 2005 approximately one year (give or take a

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day or two to conform to the Court's calendar) such that the trial setting conference will be on **November 19, 2007** or soon thereafter as is convenient to the Court's calendar. Both parties believe that a substantial further extension of the Preliminary Pretrial and Trial Setting Conference would allow the Canadian action to run its course and thus alleviate the parties' concerns relating to the overlapping of issues in the two actions in light of the fact that MIC and EMU are not present in this action and Mid-America is not present in the Canadian action.

5. Accordingly, the parties stipulate and agree that the Amended Scheduling Order be further amended and that the following dates be established. (Those parts of the Amended Scheduling Order that do not relate to dates or deadlines shall remain in force and effect):

D. Disclosure of Expert Witnesses

6. Any party wishing to present expert witness testimony with respect to a claim or defense shall lodge with the Court and serve on all other parties the name, address, qualifications, résumé and a written report which complies with Fed.R.Civ.P. 26(a)(2)(B) on or before **May 7, 2007** for the plaintiff and **May 28, 2007** for the defendant.

7. Any party objecting to the qualifications or proposed testimony of an expert must file, serve and notice a motion to exclude the expert or any portion of the expert's testimony in writing in accordance with Civil Local Rule 7-2, for hearing no later than **August 6, 2007** at 9:00 a.m.

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E. Rebuttal Expert Witnesses

8. If the testimony of the expert is intended solely to contradict or rebut opinion testimony on the same subject matter identified by another party, the party proffering a rebuttal expert shall make the disclosures required by Fed.R.Civ.P. 26(a)(2)(B), no later than **June 29, 2007**.

G. Close of Discovery

9. Pursuant to Civil L.R. 26-2, all discovery, including supplemental disclosure, depositions of expert witnesses must be completed by **August 31, 2007**.

H. Last Date for Hearing Dispositive Motions

10. The last day for hearing dispositive motions is **October 15, 2006**. Any motions must be noticed in accordance with the Local Rules of Court.

I. Preliminary Pretrial and Trial Setting Conference Statement and Proposed Order

11. The attorneys who will try the case are ordered to confer with one another and to file and lodge with Chambers on or before **November 2, 2007**, a Preliminary Pretrial and Trial Setting Conference Statement and Proposed Order, stating their readiness for trial, the amount of time which the Court should allocate for trial and the calendar period for the trial. Ordinarily, depending on the length of the trial the Court will set the trial during a calendar period approximately three to four months after the Preliminary Pretrial and Trial Setting Conference. In the Statement discussed in this paragraph, the parties should show any cause why the case should be advanced or delayed beyond this point.

12. The attorneys who will try the case are ordered to appear on **November 19, 2007 at 11:00 a.m.** for a Preliminary Pretrial and Trial Setting Conference.

IT IS SO STIPULATED.

Dated: April __, 2006

LAW OFFICES OF GEORGE W. NOWELL

By: _____/s/_____
George W. Nowell
Attorneys for Plaintiff
PROXIM CORPORATION

Dated: April __, 2006

FLYNN, DELICH & WISE LLP

By: _____/s/_____
James B. Nebel
Attorneys for Defendant
MID-AMERICA OVERSEAS, INC.

IT IS SO ORDERED.

Dated: April 18, 2006


UNITED STATES DISTRICT JUDGE

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